

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:04cr306

UNITED STATES OF AMERICA

vs.

TYVONE MAURICE SMITH

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ORDER

THIS MATTER is before the Court upon motion of the defendant pro se to correct the judgment and award credit for jail time served on pretrial release between August 18, 2004, and September 25, 2006. (Doc. No. 30).

The factual assertions in the motion do not square with the docket in this case. The defendant asserts he was named in a criminal complaint on August 11, 2004. The docket shows this case began with an indictment filed on November 16, 2004. (Doc. No. 1). The defendant states he was initially detained on August 11, 2004, but released on August 18, 2004. The docket shows the defendant was initially detained on March 24, 2005, but released on March 29, 2005.

Despite the factual inaccuracies, it appears that the defendant is seeking credit for the time he served on pretrial release against his sentence of incarceration. However, the Supreme Court has held that only the Attorney General, through the Bureau of Prisons, may compute jail credit. United States v. Stubbs, No. 97-4948, 153 F.3d 724 (4th Cir. 1998) (unpublished) (citing United States v. Wilson, 503 U.S. 329, 112 S. Ct. 1351, 117 L. Ed.2d 593 (1992)); see also Randall v. Whelan, 938 F.2d 522 (4th Cir.1991) (BOP retains discretion to determine whether conditions of pretrial release warrant credit as jail time).

Additionally, the judgment was entered on October 5, 2006. (Doc. No. 25). The time has passed for the Court to add the requested recommendation to the judgment, which would amount to more than correction of a "clerical error." Fed. R. Crim. P. 35 and 36.

IT IS, THEREFORE, ORDERED, that the defendant's pro se motion to correct the judgment and award jail credit (Doc. No. 30) is DENIED.

The Clerk is directed to certify copies of this order to the defendant, counsel for the defendant, to the United States Attorney, the United States Marshals service, and the U.S. Probation office.

Signed: January 4, 2007

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

